

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON, et al.,

Defendants.

No. C70-9213 RSM

STIPULATION AND ORDER
REGARDING CONFIDENTIALITY OF
DOCUMENTS EXCHANGED IN
MEDIATION

Note on Motion Calendar: August 10,
2017

I. INTRODUCTION.

On February 24, 2017, the Court entered an Order Directing Mediation and Appointing a Mediator Concerning Regional Salmon Management Plan. Dkt. 21405. The order provides that the “mediation shall be conducted pursuant to Paragraph 25 of the Permanent Injunction in this case, *United States v. Washington*, 18 F. Supp. 3d 1172, 1213 (W.D. Wash. 1993), and Local Rule 39.1(C)(3)-(7), including the confidentiality provisions of Local Rule 39.1(A)(6).” *Id.* at 2, ¶ 3. Local Rule 39.1(A)(6) provides that, “[e]xcept as otherwise required by law or *agreed by the litigants*, or otherwise provided by this rule, all ADR proceedings under this rule, including communications, statements, disclosures and representations made by any party, attorney or other

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1 participant in the course of such proceeding, shall, in all respects, be confidential ...” (emphasis
2 added).

3 In accordance with Local Rule 39.1(A)(6), all parties stipulate and agree to the following
4 provisions regarding the confidentiality of documents exchanged in the Regional Salmon
5 Management Plan mediation ordered by the Court and, as directed by the mediation judge,
6 respectfully request the Court’s approval of their stipulation.
7

8 **II. STIPULATION.**

9 **A. Purpose:**

- 10 1. To clarify confidentiality procedures for discussions regarding the joint Tribal-
11 State Puget Sound Chinook Resource Management Plan (RMP).
- 12 2. To ensure the integrity of the National Marine Fisheries Service’s (NMFS’)
13 independent role under the Endangered Species Act and 4(d) Rule.
14

15 **B. Applicability of Confidentiality Provisions:**

16 Any written communications and/or other documents (whether generated by
17 NMFS or the State or Tribal Co-managers) that do not contain a confidentiality
18 header shall not be subject to the confidentiality provisions of this Court’s
19 mediation order. Any communication and/or other documents that contain a
20 confidentiality header will remain confidential under this Court’s mediation order.
21 The parties, exercising due diligence, may correct the inadvertent use or omission
22 of the confidentiality header in writing.
23

24 **C. Intent of State and Tribal Co-Managers:**

25
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1 1. Communications Regarding the Development of the RMP for Submission to
2 NMFS.

3
4 a. The State and Tribal Co-Managers do not intend to use the confidentiality
5 header when communicating with NMFS regarding the development of the
6 RMP for submission to NMFS under the 4(d) Rule.

7 b. The State and Tribal Co-Managers request that NMFS not use the
8 confidentiality header when communicating with the Co-Managers
9 regarding the development of the RMP.

10 c. The State and Tribal Co-Managers intend to use the confidentiality header
11 when communicating in writing among themselves or with Federal
12 officials outside of NMFS regarding the development of the RMP.

13
14 2. Communications Regarding Other Matters within the Scope of the Mediation.

15 a. The State and Tribal Co-Managers intend to use the confidentiality header
16 when communicating among themselves, with NMFS or with Federal
17 officials outside of NMFS regarding matters other than the RMP but still
18 within the scope of the mediation.

19 b. The State and Tribal Co-Managers request that NMFS and Federal officials
20 outside of NMFS use the confidentiality header when communicating with
21 the Co-Managers regarding matters other than the RMP but still within the
22 scope of the mediation.

23
24 D. Reservation of Rights:

1 In signing this stipulation, the parties reserve their rights to object to the scope of
2 or withdraw from this mediation.

3
4 Dated: August 10, 2017.

5
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26 **III. ORDER.**

The foregoing stipulation is approved.

Dated this _16th_ day of __August__, 2017.

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Marsha J. Pechman
United States District Judge

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